

**UNITED STATES OF AMERICA
DISTRICT OF MINNESOTA**

Desean Lamont Thomas,

Civil No. 17-4017 (DWF/BRT)

Petitioner,

v.

**ORDER ADOPTING REPORT
AND RECOMMENDATION**

Contaminated H²O, et al.,

Respondent.

This matter is before the Court upon Petitioner Desean Lamont Thomas's ("Petitioner") objections (Doc. No. 7) to Magistrate Judge Becky R. Thorson's September 20, 2017 Report and Recommendation (Doc. No. 5) insofar as it recommends that: (1) this matter be summarily dismissed without prejudice; (2) Petitioner's application to proceed *in forma pauperis* be denied; and (3) Petitioner's motion for a writ of mandamus be denied.

The factual background for the above-entitled matter is clearly and precisely set forth in the Report and Recommendation and is incorporated by reference for purposes of Petitioner's objections. In this case, Thomas alleged that contaminated water at the prison where he is confined has made him and other inmates ill. In the Report and Recommendation, Magistrate Judge Thorson explained that through this "Writ of Mandamus" action, Thomas asks the Court to direct the state courts to take action in a pending habeas corpus proceeding. Further the Magistrate Judge correctly noted that a federal district court does not have legal authority to enter a writ of mandamus directed at

a state court. (Doc. No. 5 at 1.) The Magistrate Judge also noted that despite the caption, Thomas actually seeks habeas relief and explained that this would be an improper vehicle for Thomas's challenge because he is challenging the conditions of his confinement. The Magistrate Judge further explained that characterizing Thomas's pleading as a § 1983 claim would be inappropriate because his pleading remains fatally flawed as the lone defendant—"Contaminated H2O"—is not a "person," and Thomas has parallel claims regarding prison water quality pending in a separate federal case. *See Kludt v. MCF*, Civ. No. 17-3842 (D. Minn. amended Complaint filed Sept. 1, 2017).

The Court has conducted a *de novo* review of the record, including a review of the arguments and submissions of counsel, pursuant to 28 U.S.C. § 636(b)(1) and Local Rule 72.2(b). Having reviewed the record *de novo*, the Court concludes that Thomas's objections do not warrant departure from the Magistrate Judge's Report and Recommendation, and the Court agrees with the findings and conclusions reached therein. Based upon the *de novo* review of the record and all of the arguments and submissions of the parties and the Court being otherwise duly advised in the premises, the Court hereby enters the following:

ORDER

1. Petitioner Desean Lamont Thomas's objections (Doc. No. [7]) to Magistrate Judge Becky R. Thorson's September 20, 2017 Report and Recommendation are **OVERRULED**.

2. Magistrate Judge Becky R. Thorson's September 20, 2017 Report and Recommendation (Doc. No. [5]) is **ADOPTED**.

3. This matter is **DISMISSED WITHOUT PREJUDICE**.

4. The application to proceed *in forma pauperis* of Petitioner DeSean Lamont Thomas (Doc. No. [2]) is **DENIED**.

5. Thomas's motion for a writ of mandamus (Doc. No. [3]) is **DENIED**.

LET JUDGMENT BE ISSUED ACCORDINGLY.

Dated: October 16, 2017

s/Donovan W. Frank
DONOVAN W. FRANK
United States District Judge